

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAMUEL SURLES,

Plaintiff,

v.

GAYLE LEACH, RAYMOND
BOOKER, and MARVA MYLES

Defendants.

Case No. 12-cv-12403

Paul D. Borman
United States District Judge

Mona K. Majzoub
United States Magistrate Judge

**ORDER GRANTING MDOC DEFENDANTS’
MOTION TO AMEND JUDGMENT (Dkt. No. 45)**

Before the Court is MDOC Defendants Gayle Leach, Raymond Booker and Marva Myles’ Motion to Amend Judgment pursuant to Fed. R. Civ. P. 59(e) and E.D. Mich. LR 59.1. (Dkt. No. 45). Defendants’ request that this Court amend its judgment to include language indicating that its previous dismissal was a strike “as described by 28 U.S.C. § 1915(g).”

On October 31, 2013 this Court adopted Magistrate Judge Majzoub’s report and recommendation granting MDOC Defendants’ Motion to Dismiss for failure to state a claim pursuant to Fed. R. Civ. Pro. 12(b)(6). (Dkt. No. 43). Defendants now ask the Court to issue an amended judgment indicating that the dismissal counted as a “litigation strike” under 28 U.S.C. § 1915(g). Pursuant to § 1915(g),

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under

imminent danger of serious physical injury.

28 U.S.C. § 1915(g) (emphasis added). This statutory provision is popularly known as the “three strikes” provision of the Prison Litigation Reform Act of 1995. *See Wilson v. Yaklich*, 148 F.3d 596, 602 (6th Cir. 1998).

The present action was dismissed for failure to state a claim. As a result, the Court finds that pursuant to the plain language of § 1915(g), its previous judgment dismissing Plaintiff’s complaint is a strike as described in § 1915(g). Therefore, it is appropriate to grant Defendants’ Motion to Amend which seeks an amended judgment noting that the dismissal is one described in § 1915(g).

For these reasons, the Court GRANTS Defendants’ Motion to Amend the Judgment (Dkt. No. 45) and an Amended Judgment will be ENTERED.

SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: December 2, 2013

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on December 2, 2013.

s/Deborah Tofil
Case Manager